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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/017,287	12/12/2001	Michael Black	RLT-111/US	1768

23419 7590 06/28/2005

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EXAMINER

SHAY, DAVID M

ART UNIT	PAPER NUMBER
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3739

DATE MAILED: 06/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No. 10/017,287	Applicant(s) BLACK, MICHAEL	
	Examiner david shay	Art Unit 3739	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on April 11, 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3, 6-12, 18-23, 25-35, 38-53, 55, 56, 69, and 70 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 6-12, 18-23, 25-35, 38-53, 55, 56, 69 and 70 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>September 17, 2004</u> . | 6) <input type="checkbox"/> Other: _____ |

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A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on April 11, 2005 has been entered.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-3, 6-12, 20, 21, 23, 25, 26, 30-35, 38, 39, 43, 45-51, 55, 69 and 70 are rejected under 35 U.S.C. 103(a) as being unpatentable over Black et al ('740) in combination with Sugiyama et al. Black et al ('740) teach a device and method as claimed, including the spot size, but does not discuss the source of the different laser wavelengths applied at all once. Sugiyama et al teach that multiple lasers can be used to produce simultaneous beams of differing frequencies. It would have been obvious to the artisan of ordinary skill to employ the applicator of Black et al ('740) in the apparatus and method of Sugiyama et al, since this will direct all the laser wavelengths to the same spot, and enables the use of smaller spot sizes, as taught by Black et al (740) or to employ the device and method of Sugiyama et al in the device and method of Black et al ('740) since Black et al ('740) give no structure to apply different beams all at once, thus producing a device such as claimed.

Claims 1-3, 6, 8-12, 25, 26, 28, 30-35, 43, 45-51, 55, 69, and 70 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dumoulin – White et al in combination with Black et al ('740). Dumoulin – White et al teach a device such as claimed except the use of a mirror device, the spot size and scanning the beam. Black et al ('740) teach the use of a mirror based

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focusing device that produces the claimed spot size and seams the beam. It would have been obvious to the artisan of ordinary skill to employ the device and method of Black et al ('740) in the device and method of Dumoulin – White et al, since this would locate the various wavelength of laser light at the same point, thus producing a device and method such as claimed.

Claims 1-3, 6-8, 10-12, 19, 25, 26, 30-35, 38, 39, 41, 43, 45-51, 53, 55, 69, and 70 are rejected under 35 U.S.C. 103(a) as being unpatentable over Freiberg in combination with Black et al ('740). Freiberg teaches device on claimed except the mirror-based device, the spot size, and scanning. Black et al ('740) teach the use of a mirror-based device to form a spot size as claimed which can be scanned. It would have been obvious to the artisan of ordinary skill to employ the device and method of Black et al ('740) in the device and method of Freiberg, since this would effectively combine the different wavelengths and project them at the same spot, as taught by Black et al ('740) or to employ the sources and beam combiners of Freiberg in the device of Black et al ('740) since Black et al ('740) describes no structure for applying different color beams all at once, thus producing a device and method such as claimed.

Claims 1, 18, 28, 29, 31, 40, 45, and 52 are rejected under 35 U.S.C. 103(a) as being unpatentable over Freiberg in combination with Black et al ('740) as applied to claims 1-3, 6-8, 10-12, 19, 25, 26, 30-35, 38, 39, 41, 43, 45-51, 53, 55, 69, and 70 above, and further in view of Black et al ('936). Black et al ('936) teach the use of a micromanipulator as an input for an endoscope. It would have been obvious to the artisan of ordinary skill to employ the micromanipulator of Black et al ('936) in the device of Freiberg, since this is an appropriate control device for an endoscope, as taught by Black et al ('936) or to include the beam combiner of Freiberg in the device of Black et al ('936), since this allows multiple treatments with a single

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instrument as taught by Freiberg and to construct the device in the claimed dimensions, since this would render the device such as claimed.

Claims 20, 22 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Freiberg a combination with Black et al ('740) as applied to claims 1-3, 6-8, 10-12, 19, 25, 26, 30-35, 38, 39, 41, 43, 45-51, 53, 55, 69, and 70 above, and further in view of Dew. Dew teaches removing optical components from the optical path by rendering the location that the optical component resides in no longer a part of the optical path. It would have been obvious to the artisan of ordinary skill to employ the optical path combining device of Dew in the device of Freiberg, since Freiberg discloses no particular mechanism to accomplish the superposition of beams, thus producing a device such as claimed.

Claims 27, 44, and 56 are rejected under 35 U.S.C. 103(a) as being unpatentable over Freiberg as combination with Black et al ('740) as applied to claims 1-3, 6-8, 10-12, 19, 25, 26, 30-35, 38, 39, 41, 43, 45-51, 53, 55, 69, and 70 above, and further in view of Kittrell et al. Kittrell et al teach an apparatus for and method of the use of fluorescence maps for diagnosing tissue to locate tissue that is suitable for removal. It would have been obvious to the artisan of ordinary skill to employ the diagnostic system of Kittrell et al in the system of Freiberg since this can locate the tissue requiring treatment and prevent the treatment of healthy tissue as taught by Kittrell et al or to include the multiple laser system of Freiberg in the device of Kittrell et al, since this would allow treatment of both hard and soft tissue, as taught by Freiberg, thus producing a device such as claimed.

Applicant's arguments filed April 11, 2005 have been considered but are not persuasive. Both Freiberg and Sugiyama et al provide for the delivery of more than one beam from more than

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two lasers. Black ('740) requires that the spot size be maintained and treats the skin, which is non-planar, and therefore the device of Black ('740) must deliver the beam in a three dimensional scanning pattern to treat the skin with a constant spot size, and leave proximal healthy tissue undamaged.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to david shay whose telephone number is (571) 272-4773. The examiner can normally be reached on Tuesday through Thursday from 6:30 a.m. to 5:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda Dvorak, can be reached on Monday, Tuesday, Thursday, and Friday. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



DAVID M. SHAY
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GROUP 330